

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, ET AL.,)	CASE NO: 2:13-CV-00193
)	
Plaintiffs,)	CIVIL
)	
vs.)	Corpus Christi, Texas
)	
RICK PERRY, ET AL.,)	Friday, February 14, 2014
)	
<u>Defendants.</u>)	(10:36 a.m. to 10:57 a.m.)

HEARING

BEFORE THE HONORABLE NELVA GONZALES RAMOS,
UNITED STATES DISTRICT JUDGE

Appearances:	See Next Page
Court Recorder:	Genay Rogan
Clerk:	Brandy Cortez
Transcriber:	Exceptional Reporting Services, Inc. P.O. Box 18668 Corpus Christi, TX 78480-8668 361 949-2988

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1 Corpus Christi, Texas; Friday, February 14, 2014; 10:36 a.m.

2 (Courtroom and Telephonic Appearances)

3 (Call to Order)

4 **THE COURT:** The Court calls Cause Number 2:13-193,
5 *Veasey, et al versus Perry, et al.* Mr. Smith is present in the
6 courtroom. So do you want to announce for the record?

7 **MR. SMITH:** Your Honor, John Smith on behalf of the
8 United States.

9 **THE COURT:** All right. And then starting with the
10 Plaintiffs, if you-all want to announce for the record, we'll
11 go with the Veasey Plaintiffs and the LULAC Plaintiffs.

12 **MR. DUNN:** Good morning, your Honor. This is Chad
13 Dunn on behalf of Veasey/LULAC Plaintiffs. On the call with me
14 is Armand Derfner, Neil Baron, Gerry Hebert and Emma Simpson
15 and on the issue of the protective order, Mr. Derfner will be
16 addressing that.

17 **THE COURT:** All right. The United States of America?

18 **MS. BALDWIN:** Good morning, your Honor. This is Anna
19 Baldwin and on the call with me today I have Robert Berman,
20 Meredith Bell-Platts, Daniel Freeman and Bruce Gear.

21 **THE COURT:** All right. Then the Mexican American
22 Legislative Caucus, also Texas House of Representatives and the
23 State Conference of NAACP Branches?

24 **MR. ROSENBERG:** Yes, good morning, your Honor. This
25 is Ezra Rosenberg. I'll be taking the lead in all this. With

1 me on the phone are Erandi Zamora and Sonia Gill.

2 **THE COURT:** Okay. And then the Texas League of Young
3 Voters Education Fund?

4 **MR. HAYGOOD:** Good morning, your Honor. This is Ryan
5 Haygood with my colleagues Natasha Korgaonkar, Jonathan Paikin,
6 Richard Shordt, Sonya Lebsack and Hasan Ali.

7 **THE COURT:** All right, good morning.

8 And then Texas Association of Hispanic County Judges
9 and County Commissioners?

10 **MR. RIOS:** Good morning, your Honor. This is Rolando
11 Rios for the Hispanic Judges and Commissioners.

12 **THE COURT:** All right. And I think we --

13 **MR. RIOS:** With me is Mr. -- Preston Henrichson is on
14 the line already, your Honor, for (indiscernible).

15 **THE COURT:** Okay. And we have one more group of
16 Plaintiffs, correct, the Espinosa Plaintiffs?

17 **MR. GARZA:** Yes. This is Jose Garza for Espinosa,
18 et al and I believe that Robert (indiscernible) and
19 (indiscernible) are also on the phone.

20 **THE COURT:** Okay. Any other Plaintiffs on the phone?

21 **MR. ROSENBERG:** Your Honor, Ezra Rosenberg again. I
22 understand both Michelle Yeary and Jennifer Clarke are also on
23 -- with me on behalf of MALC and the Texas NAACP.

24 **THE COURT:** Okay. And then the Defendants?

25 **MR. SCOTT:** Your Honor, John Scott for the State of

1 Texas.

2 **THE COURT:** Okay. This is a status hearing. We had
3 convened here on Wednesday. It was to address the joint motion
4 to enter a discovery order and supplemental protective order
5 and I thought the United States and the months were aligned
6 with respect to that joint motion. That's the way it was filed
7 but after reading the Government's -- or the -- I'm sorry --
8 Texas -- Defendant's response filed late yesterday, I'm not so
9 sure that motion is joint anymore.

10 But in any event, at the end of the hearing on
11 Wednesday, I asked the United States and the -- I'll refer to
12 them as the "Veasey Plaintiffs" because I had specifically
13 objected to certain portions of what had been submitted to the
14 Court to get together to see -- there were some agreed matters
15 in that proposed order. What was at issue was a tinier
16 sequence of events as to how that was going to play out.

17 So I asked them to get together and see if the
18 parties could agree on an agreed order that would be submitted
19 to the Court so we could start the ball rolling. Then the
20 United States filed a response yesterday agreeing to what the
21 Veasey Plaintiffs had proposed in -- I believe it was the
22 DE-161 Exhibit 3 regarding some initial steps to begin this
23 work but then the Defendants filed a response late yesterday
24 saying they had an issue with that because of some privacy
25 concerns, et cetera.

1 So I'm going to let the Government address what's at
2 issue here with trying to get an agreed order at least on the
3 matters that are agreed to.

4 **MS. BALDWIN:** Your Honor, this is Anna Baldwin for
5 the United States. Our understanding is that the motion -- the
6 underlying motion filed by the United States actually continues
7 to be a joint motion and the United States continues to support
8 that motion and urges the Court to adopt it in its entirety,
9 that motion --

10 **THE COURT:** Okay. All I wanted to address is what
11 can we agree to to get the ball rolling.

12 **MS. BALDWIN:** Yes, your Honor.

13 **THE COURT:** That's all. What's the issue with the
14 agreed order?

15 **MS. BALDWIN:** So with the agreed order, the United
16 States supports going ahead and entering the excerpts of --
17 from the supplemental protection order because we can't afford
18 to lose more time or have the process derailed by underlying
19 motion practice. So, you know, we would support on behalf of
20 the United States having the Court go ahead and enter the
21 supplemental protection order excerpts to allow data to be
22 produced by the Texas within one business day after entering
23 the order and, you know, start the ball rolling on the process
24 of negotiating and finalizing the actual database comparison of
25 algorithms by the -- both Plaintiffs' side and Texas.

1 At the same time, if the database discovery process
2 is able to get moving once that order is entered, we're in
3 discussions and we'll remain in discussions with other parties
4 and --

5 **THE COURT:** Okay. I guess my issue is, did you read
6 the response filed by the Defendants yesterday and is there
7 some way to address those?

8 **MS. BALDWIN:** Well, your Honor, our understanding is
9 that in, you know, the agreed portion that would be entered,
10 the data would only be produced to the United States. We
11 believe that it's already --

12 **THE COURT:** Okay. You think what's agreed to and
13 what the United States has agreed to as to what the Veasey
14 Plaintiffs have proposed addressed the Defendants' concerns,
15 correct?

16 **MS. BALDWIN:** As far as in terms of, you know -- and
17 I would understand it to be before Texas but in terms of --

18 **THE COURT:** I'm going to let them speak. I'm just
19 trying to get the parties' positions here so we can get an
20 agreed order and start rolling.

21 **MS. BALDWIN:** So I believe that that order -- I
22 believe that Texas raised initially two concerns. One is that
23 the data should only be produced by the United States. I
24 understand that that concern is addressed in the four corners
25 of the agreed upon document.

1 **THE COURT:** All right.

2 **MS. BALDWIN:** Our second concern is a larger concern
3 about the fact that this was part of an entire negotiated
4 framework that was allowing Defendants to have adequate time to
5 ensure that they had input and that document -- it can't be to
6 that larger concern. With that said, I can commit on behalf of
7 the United States that the United States is not walking away
8 from the commitment to run an algorithm drafted by the State of
9 Texas. We think that's an essential part of us allowing --

10 **THE COURT:** And that doesn't even address that. I
11 think this agreed order -- proposed agreed order only addresses
12 these initial first steps to get things rolling.

13 **MS. BALDWIN:** Yes, your Honor, and we think it's very
14 vital to get this going so as not to lose more time in the
15 process.

16 **THE COURT:** All right. Mr. Dunn?

17 **MR. DUNN:** Your Honor, Mr. Derfner will be taking the
18 lead on that.

19 **THE COURT:** Okay.

20 **MR. DERFNER:** Thank you, your Honor. On behalf of
21 Veasey Plaintiffs, I think the answer is that there really is
22 an agreement and that Texas' concerns are not real concerns at
23 this stage. If we can just take a second and go over what the
24 concerns are and what all the parties already know.

25 The agreed order would cover 161-3, Pages 1 through

1 10 and what we've done there is to take verbatim the parts of
2 the U.S. and Texas joint order that really we think are agreed
3 to and specifically and then we -- but specifically Paragraphs
4 1 through 5 are there, the introductions.

5 Then -- and Paragraphs 14 through 26 which cover all
6 the protective and confidentiality portion plus a little piece
7 of Paragraph 9 which is also the confidentiality issue -- those
8 are all that is in the -- what we call the "agreed order."
9 Paragraphs 6 through 13, which have some schedules of -- are
10 taken out of that order. So what we've got is the U.S./Texas
11 joint order -- a joint proposed order verbatim as set forth in
12 the scheduling portion after the first few sentences which is
13 the State of Texas producing the data and the U.S. coming back
14 with its proposed algorithm.

15 We did that in order to be as verbatim as possible.
16 What Texas has said is those are one -- Texas said in the first
17 sentence -- and this is copied from their papers. It says they
18 can't agree to the Veasey Plaintiffs' schedule and then they
19 cite 161-3. So that may suggest that, in fact, what they're
20 concerned about is the parts of the order that we took out
21 because we say we know they're not agreed to but they say,
22 number one, as Ms. Baldwin just said, they're concern is
23 there's -- that there may not be adequate protection in the
24 confidentiality issue and the confidentiality language that was
25 in the proposal -- the joint proposal of the U.S. actually is

1 in this 161-3, Page 1 through 10.

2 The second concern -- the Texas concern that -- about
3 later parts of the schedule and so I think those are also not
4 real concerns for this order. So that's why I come back to the
5 notion that everything here really is agreed and to the extent
6 Texas says they're not, the reasons they give are not real
7 reasons for not agreeing to this part of the agreement.

8 **THE COURT:** All right. Mr. Rosenberg, anything on
9 this issue?

10 **MR. ROSENBERG:** No, nothing further beyond what the
11 DOJ and Mr. Derfner said.

12 **THE COURT:** Mr. Garza?

13 **MR. GARZA:** Nothing further beyond the United States
14 renews its position.

15 **THE COURT:** All right. Ms. Haygood?

16 **MR. HAYGOOD:** Yes. There's nothing further here as
17 well.

18 **THE COURT:** And Mr. Rios?

19 **MR. RIOS:** We would (indiscernible) ourselves with
20 (indiscernible). Thank you, your Honor.

21 **THE COURT:** Are you on a landline, sir?

22 **MR. RIOS:** Me?

23 **THE COURT:** Yes.

24 **MR. RIOS:** No, is there an echo, your Honor?

25 **THE COURT:** Well, it's coming across very garbled. I

1 think we're okay for now but I'll let you know if there's an
2 issue.

3 All right. Mr. Scott, do you want to proceed?

4 **MR. SCOTT:** Yes, ma'am. Our concerns have been and
5 continue to be about privacy for us obviously and one of the
6 things -- while the first 161-3 will cover the issue, it does -
7 on the short term, it does not cover it on the long term. By
8 that, I reference when we try to get our algorithms run, we may
9 run into problems with some other parties saying they want
10 portions of the discovery that would otherwise be protected or
11 privileged.

12 **THE COURT:** Right. And I think we probably can
13 discuss that later. I'm just trying to get an agreed order on
14 the initial steps and start rolling.

15 **MR. SCOTT:** And so our first part of this thing is we
16 worked out an agreement with the United States whereby they
17 didn't want to turn over their database. We didn't want to
18 turn over ours. We dealt with the system where they would run
19 all these things. We have -- in fact, I think we're the only
20 party that has turned over our algorithm. What we do not know
21 is whether the United States separate and apart from this has
22 the capability to run that algorithm and produce results from
23 that algorithm. That's something that we visited with
24 Ms. Baldwin about this morning and I think the United States
25 understands that position that we've taken on that.

1 So we need to get some kind of affirmation. We built
2 in safeguards in the 160 document that was provided to the
3 Court that assured us that we would -- even though this was
4 going to be done by one of our party opponents in this
5 litigation, would give us some assurances that we were getting
6 a fair shake in what they were being -- what was being run
7 would be done so in a fair way.

8 So we're back to the situation under the present
9 161-3 where Texas would unilaterally be providing its databases
10 to the party Plaintiffs who are suing it. They would then be
11 allowed to start -- get a head start and start producing their
12 algorithm responses that they want to use in this lawsuit.
13 Texas would be put to the burden of having it analyzed it back
14 and tried to make an agreement between all the parties and then
15 would send that issue to the Court and once that done, then you
16 would give that information to the United States to have them
17 run it. At that point in time whenever we got our documents,
18 we would be able to get our experts the information they need
19 to try to defend the statute. So it puts us at a great
20 disadvantage. One, it does not exist under the 160 document.

21 **THE COURT:** Right. And then -- I guess my problem
22 was 160 or whatever was submitted by -- in the joint motion
23 that was not agreed to, I was trying to get an order then on
24 what can be agreed to at this point --

25 **MR. SCOTT:** Yes, ma'am.

1 **THE COURT:** -- because -- only because it sounded
2 like we could do that. Maybe we can't.

3 **MR. SCOTT:** Well, and 160 I think was approved by
4 everybody for everything except for one thing. One of the
5 things that the other -- I don't want to speak for the Veasey
6 Plaintiffs but my understanding from DOJ was that I think that
7 their main complaint was the timeframe, the --

8 **THE COURT:** Right.

9 **MR. SCOTT:** -- 18 weeks that it might be done. Well,
10 the State of Texas has already provided its algorithm to the
11 United States. I don't know if the Veasey folks have provided
12 their algorithm but we have provided it. That was the thing
13 that looked like it might cause a great delay. Well, that's
14 not even an issue. We are the only party who has given an
15 algorithm out to everybody in the case.

16 So I guess they come up with a solution to a
17 nonexistent problem and so that's where we still find trouble
18 in not going forward on the 160 document because it should be
19 agreeable to everybody with the only question yet to be
20 resolved is the timeframe for the information and quite
21 frankly, I have no earthly idea how long it takes the
22 departments -- the various departments within the United States
23 organization to be able to run those things. And I think --
24 you know, I didn't know anybody else other than DOJ that has
25 actually visited with those folks to come up with a meaningful

1 estimate of time.

2 **THE COURT:** All right. Mr. Derfner?

3 **MR. DERFNER:** Yes. I hear Mr. Scott's concern and I
4 think it -- I think that the mere fact that the second part of
5 the order that sets out the schedule would not be in there at
6 this time is not a problem. What he's concerned about -- or
7 what he says he's concerned about -- and, you know, justifiably
8 so, is they want to make sure that they're going to have a
9 chance that their algorithm. It's inconceivable to me that the
10 Court would allow a process that didn't give Texas --

11 **THE COURT:** Right. I mean, I --

12 **MR. DERFNER:** -- a chance to run their algorithm.

13 **THE COURT:** -- I don't see that either. I -- bottom
14 line, gentlemen and ma'am's, can we come to an agreement on
15 what's agreed to or not?

16 **MR. DERFNER:** I think we can.

17 **THE COURT:** Ms. Baldwin?

18 **MR. DERFNER:** I think it's there.

19 **THE COURT:** Well, I thought it was there too but --
20 anyway, Ms. Baldwin?

21 **MS. BALDWIN:** The United States is agreeable to use
22 the excerpts from the protective order out of the first --

23 **THE COURT:** Okay. So I guess -- Mr. Scott, then what
24 is it exactly that you're not agreed to on 161-3?

25 **MR. SCOTT:** Well, your Honor, I -- if we can get

1 assurances -- two-prong. If we can get assurances that our
2 algorithm can be run at the same time that the United States
3 algorithm is run and then --

4 **THE COURT:** Okay. And -- let me just -- I'm sorry.
5 Let me just pipe in a little bit. At the same time -- that's
6 kind of what I was addressing the other day and the Government
7 was going to see what could be done about that, I believe, and
8 we were going to set it for a status hearing. So when you say
9 "at the same time," do you really mean at the same time or that
10 you're just wanting your algorithm run, too?

11 **MR. SCOTT:** Well, I think for preferences, this is
12 what -- I think the latter is correct. We want to make sure
13 it's run too but I think from visiting with Ms. Baldwin, we
14 think it's possible if not -- actually it's very probable that
15 all of the algorithms can be run at the same time.

16 **THE COURT:** Which is what I was trying to get to at
17 the Wednesday hearing.

18 **MR. SCOTT:** Yes, ma'am. And so that's why we're --
19 we were confused on why the 160 order was not appropriate
20 because it sounded like we were at that point of being able to
21 confirm to everybody that we were able to go ahead and run
22 everything.

23 **THE COURT:** I know but you know when I had the
24 hearing, the Government couldn't say that. Remember, I kept
25 saying yes, no, I don't know and they couldn't really give me

1 an answer until at some point, they finally, I think, said we
2 don't know or can we have another hearing to figure that out
3 and I may be mixing some of the things there. But do you
4 recall that whole discussion that I was trying to pinpoint the
5 Government, can this be done and the Government wasn't
6 cooperating with me?

7 **MS. BALDWIN:** Your Honor, I'm happy to -- Ms. Baldwin
8 could clarify on that point if that would be helpful.

9 **THE COURT:** Yes.

10 **MS. BALDWIN:** So essentially the United States --
11 until we have an ultimate final algorithm from Texas and until
12 we have data from Texas to allow the United States to finalize
13 its own algorithm, we have to take those proposals to the
14 federal agents to give to their staff.

15 **THE COURT:** I guess the point is that you -- that's
16 still not clear. What Mr. Scott has a concern with is still
17 not clear as to whether that can be done?

18 **MS. BALDWIN:** A definitive answer cannot be given,
19 your Honor. However, what we would anticipate is if there are
20 certain steps that the United States and Texas can agree upon,
21 it is possible notwithstanding the fact that there would be two
22 different algorithms. It may be possible for that to be run as
23 part of one computational process. And the question --

24 **THE COURT:** And I guess that's the point Mr. Scott --
25 that's the point that the Plaintiffs -- or Veasey Plaintiffs

1 are having -- would be the timeframe on that. So, no, it
2 doesn't sound like the Government has said, yes, this can be
3 done. Is that what you're hearing, Mr. Scott?

4 **MR. SCOTT:** I -- yes, ma'am.

5 **THE COURT:** Okay. That was what I was hearing all,
6 you know, through the hearing on Wednesday.

7 **MR. SCOTT:** If they could give -- if they would
8 simply say they agree to our algorithm now and that they will
9 run it, then I think we can insert that language and we're fine
10 with what is --

11 **THE COURT:** It's going to be run anyway, right,
12 whether they agree to it or not because either you-all are
13 going to have one that you-all agree to or the Government is
14 going to have their own, right?

15 **MR. SCOTT:** I haven't gotten that assurance.

16 **THE COURT:** I'm sorry? But why wouldn't -- I mean,
17 that would seem only fair.

18 **MR. SCOTT:** Your Honor, it's not in the order.

19 **THE COURT:** Because we're only doing the initial
20 steps in the order maybe, the agreed steps?

21 **MR. SCOTT:** Well, the agreed steps start the process
22 for any --

23 **THE COURT:** Okay. So why isn't that in the order,
24 Mr. Derfner?

25 **MR. DERFNER:** Pardon me? Why isn't which in the

1 order?

2 **THE COURT:** In the one that you-all proposed that the
3 Government -- United States has agreed to. Mr. Scott's saying
4 what he's concerned about, running a Texas algorithm is not in
5 the order.

6 **MR. DERFNER:** Okay. The only reason it's not in the
7 order is that the order had all kinds of dates in it. I think
8 we'd be happy to put a line in the order that says there's a
9 guarantee that Texas will have an opportunity to have its
10 algorithm run in some way or other.

11 **THE COURT:** Does the United States agree to that?

12 **MS. BALDWIN:** Your Honor, in principle, of course, we
13 agree that some -- that Texas is --

14 **THE COURT:** Yes or no, can that be put in the agreed
15 order?

16 **MS. BALDWIN:** The exact language would matter, your
17 Honor, but in concept, yes.

18 **MR. DERFNER:** The Plaintiff would add more thing,
19 your Honor. And, in fact, getting the process started is
20 three-quarters of the battle, just --

21 **THE COURT:** Now, can we agree to that sentence that
22 Texas is wanting or whatever it is and it sounds like Mr. Dunn
23 is saying yes, certainly, no problem and then, United States,
24 do you propose different language then? Let me know what it is
25 that can cover Mr. Scott's concern.

1 **MS. BALDWIN:** Your Honor, I would happy to do so.
2 I'm not sure that I could so right now.

3 **THE COURT:** Okay. What is it? What -- just give me
4 a kind of ballpark as to what you want -- the Government would
5 want. I'm not pinning you down. You-all can go back and forth
6 on it a little bit.

7 **MS. BALDWIN:** In terms of the timeframe, your Honor,
8 the language.

9 **THE COURT:** What Mr. Dunn has conceded that they
10 would be agreeing to put some sentence in there that appears to
11 alleviate Mr. Scott's concern. So that's what I'm referring
12 to. It sounds like if we can get that language in this
13 proposed agreed order, the Defendants would be okay with that.
14 Is that right, Mr. Scott?

15 **MR. SCOTT:** Yes, ma'am, absolutely.

16 **THE COURT:** Okay.

17 **MS. BALDWIN:** And the United States would be happy to
18 work with the parties to come up with a sentence that would
19 address those concerns, your Honor.

20 **THE COURT:** All right. Well, shall we get on the
21 phone this afternoon and see if you-all have worked on that
22 sentence?

23 **MR. SCOTT:** That's a good idea, yes, your Honor.

24 **THE COURT:** Okay. I have a matter set at 2:00. If
25 you-all want to maybe at 3:00? Is everyone available at 3:00?

1 I'm going to assume everyone is unless I hear a "No." I don't
2 hear any "No's." So you-all work on that order. I would
3 really like to get an agreed order signed so we can get moving
4 on these matters and I will visit with you at 3:00 o'clock then
5 if nothing further. Thank you.

6 **MR. SPEAKER:** Thank you, your Honor.

7 **(This proceeding adjourned at 10:57 a.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

February 19, 2014

TONI HUDSON, TRANSCRIBER